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In the
Supreme Court of the United States
OCTOBER TERM, 1970

No. 900

RAYMOND P. YORK and YVONNE J. YORK,
Petitioners,

VERSUS

BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT 89, OKLAHOMA COUNTY,
Respondent.

BRIEF IN OPPOSITION AND RESPONSE TO THE PETITION FOR A WRIT OF CERTIORARI

The Petition for a Writ of Certiorari should be denied.

QUESTIONS PRESENTED BY THE PETITIONERS

The three questions presented for review on page 4 of the Petition for a Writ of Certiorari are violative of Rule 23.1(c) of the Rules of this Court in that they are not "expressed in the terms and circumstances of the case." The Petition should be denied for this reason alone.

The Petitioners' statement of Question 1 is self-serving. Their declarations as to "obvious purpose" and no Federal question being involved are mere suppositions, and are not based on any factual situation in the case. Such a question is not reviewable on certiorari.

If the Petitioners were correct in stating in Question 1 that the trial court "entered no order requiring assignment or transportation of students," then they are incorrect in indicating in Question 2 that the trial court did issue an order "requiring assignment and transportation of their child."

Question 3 is based on the premise that, in the decision of the United States Court of Appeals for the Tenth Circuit, a spouse was "held accountable for the action of the other upon the stated ground that he failed to testify in his own defense, denying the charge of contempt."

This premise is shown to be false in the following language of the opinion of the Court of Appeals, on page ix of the Appendix to the Petition:

> "The preliminary injunction imposed an affirmative burden on both to send their son to Harding rather than Taft if he continued in the public schools. The father does not claim that he did anything to comply therewith. Instead, he stood by and apparently condoned the violation by his wife. His failure to obey the order was his own act, not that of his wife. The district court properly held him in contempt."

STATEMENT

On page 4 of the Petition, the Petitioners state that this action was brought because of the Petitioners' failure to enroll their son in his assigned school. This is not correct. It was brought to keep the child from attending a school (Taft) that was not his assigned school.

On page 9 of the Petition, the Petitioners make it appear that the trial court ordered "an individual student to

attend a specific school." That is not correct. The order of the trial court was not that the student must attend a specific school, but that he not be allowed to attend a school to which he had not been assigned by school officials. His assigned school was Harding. The injunction was to keep him from attending another school, Taft, to which he had not been assigned.

The Preliminary Injunction, which is appended to this Brief as Appendix "A," restrained and enjoined the Petitioners herein, jointly and severally, from:

> "sending Raymond York to attend Taft Junior High School or attempting to have him attend Taft Junior High School,"

and ordered the Petitioners to:

> "forthwith remove their son, Raymond York, from the Taft Junior High School where he is presently attending without proper authority."

Still another inaccuracy in the Petition is the statement on page 8 of the Petition that the trial court required boundary changes and transportation of students. The statement is incorrect. It is opposed to the statement in Petitioners' Question 1 that the trial court "entered no order requiring assignment or transportation of students."

The correct facts in this case are that, formerly, the Petitioners herein lived in an attendance area served by Taft Junior High School, and their son attended Taft—his assigned school.

Having previously been ordered by the trial court to prepare a Desegregation Plan, the Respondent herein did so, and the Plan was approved by the trial court.

Under the approved Desegregation Plan, the residence of the Petitioners was no longer in the Taft attendance area, but was in the attendance area served by Harding Junior High School.

Not wanting their son to attend Harding, and wanting him to continue to attend Taft, the son was re-enrolled in Taft at a false address in the Taft attendance area.

The Respondent discovered that the son was not living at the address given, but was still living in the Harding attendance area; terminated his enrollment in Taft; and asked the Petitioners to remove their son from the school, but the Petitioners refused and continued to send him to Taft.

The Respondent thereupon instituted proceedings for an injunction to stop the Petitioners from allowing their son to attend Taft. The trial court issued a Preliminary Injunction, which is Appendix "A" of this Brief, ordering the Petitioners to remove their son from Taft, and enjoining them from sending him to attend that school.

The Petitioner, Raymond P. York, disobeyed the injunction by not removing his son from Taft and by allowing him to attend Taft. His wife, Yvonne J. York, also violated the order by actually taking the son to Taft for attendance thereat.

ARGUMENT

The Petitioners defied the Desegregation Plan and the trial court's order approving the Plan, and refused to remove their son from Taft. The Respondent asked the trial court to enjoin the Petitioners from interfering with the Plan's operation.

The actual purpose and effect of the injunction was to enforce the District Court's order approving the Desegregation Plan—a court-ordered plan. As stated by the Petitioners on page 8 of the Petition, "The cause of action upon which the Trial Court acted herein is predicated upon a general order to desegregate." The approval order had not been reversed when the injunction was issued.

Issuance of the injunction to enforce the court's order approving the Desegregation Plan, and directing that it be put into effect, was authorized by 28 U.S.C.A. § 1651.

In *Mississippi Valley Barge Line Company* v. *United States*, 273 F.Supp. 1, 6 (D.C.E.D. Mo. 1967), *aff'd* 389 U.S. 579, 88 S.Ct. 692, 19 L.Ed.2d 779, *reh. den.* 390 U.S. 975, 88 S.Ct. 1024, 19 L.Ed.2d 1193, it was stated:

> "It is well settled that the courts of the United States have the inherent and statutory (28 U.S.C.A. § 1651) power and authority to enter such orders as may be necessary to enforce and effectuate their lawful orders and judgments, and to prevent them from being thwarted and interfered with by force, guile, or otherwise. Federal Trade Commission v. Dean Foods Co., 384 U. S. 597, 86 S. Ct. 1738, 16 L. Ed. 2d 802; Faubus v. United States, 254 F. 2d 797 (CA8); United States v. Wallace, 218 F. Supp. 290 (DC Ala.). This rule applies whether or not the person charged with the vio-

lation of the judgment or decree was originally a party defendant to the action."

The injunction having been issued, and the District Court having had the authority to issue it, the Petitioners had the duty to obey it.

In United States v. United Mine Workers of America, 330 U.S. 258, 293, 91 L.Ed. 884, 912, 67 S.Ct. 677, 695 (1947), it was stated:

"Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued."

And in Howat v. Kansas, 258 U.S. 181, 189, 66 L.Ed. 550, 42 S.Ct. 277, 280 (1921), the Court said:

"An injunction duly issuing out of a court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming, but void law, going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."

CONCLUSION

The Petitioners have not shown any, and there is not any, special or important reason for a review on certiorari herein as provided by Rule 19 of the Rules of this Court. The decision of the Court of Appeals was in keeping with sound judicial thinking. It was in harmony with decisions of this Court.

It is respectfully submitted that certiorari should not be granted, and that the Petition therefor should be denied.

J. Harry Johnson
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Oklahoma City, Oklahoma 73102
Attorney for Respondent, Board of Education of Independent School District Number 89 of Oklahoma County, Oklahoma

February, 1971

APPENDIX A

FILED
JAN 14 1970
Rex B. Hawks
Clerk, U. S. District Court
By S. F. Bailey
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NUMBER 89 OF OKLAHOMA COUNTY, OKLAHOMA,	)	
Plaintiff,	)	
vs.	)	No. 69-551 Civ.
RAYMOND P. YORK AND YVONNE J. YORK,	)	
Defendants.	)	

ORDER GRANTING PRELIMINARY INJUNCTION, FINDINGS OF FACT, CONCLUSION OF LAW AND PRELIMINARY INJUNCTION

This cause came on for hearing on January 5, 1970, pursuant to Plaintiff's Notice of Hearing Motion for Preliminary Injunction. The parties and their respective counsel appeared and announced ready for trial. Statements by counsel for Plaintiff and Defendants were made and a written stipulation was filed in open court, entered into and approved between the Plaintiff and the Defendants which stipulation IS HEREBY ORDERED approved by the Court. Thereafter, this case was continued for hearing until January 12, 1970, and again came on for hearing and the Plaintiff appeared by its attorneys, Mr. J. Harry Johnson, Mr. Leslie L. Conner and Mr. James M. Little and the Defendants appeared in person and by their attorney of record, Mr. Clyde J. Watts. After statement of counsel an oral

stipulation was made by the attorneys for the parties in open court which oral stipulation has been transcribed and filed in the case, and IS HEREBY ORDERED approved by this Court.

A witness for Defendants was sworn and examined in open court and thereafter the taking of evidence was closed and after argument of counsel, the Court from the Complaint, evidence and Stipulation makes the following findings of fact, conclusions of law and enters the following judgment for preliminary injunction.

FINDINGS OF FACT

1. The Court has jurisdiction of the parties and the subject matter of this action and the amount in controversy exceeds the sum or value of $10,000.00 exclusive of interest and costs and comes under the Constitution and law of the United States.

2. That the Defendants and their son, Raymond York, reside at 2808 N. W. 44th and have resided at said address for approximately ten (10) years. That the Defendants are the natural parents of Raymond York, age fourteen (14). That the Defendants, Raymond P. York and Yvonne J. York, and their son, Raymond York, all live in the attendance area for the Harding Junior High School of the public school system operated by Plaintiff as that attendance area is outlined by the Plan approved August 13, 1969, by this Court in Case No. 9452, Civil, on file in this Court.

3. Raymond York does now, and did at all times hereinafter mentioned, live with his parents, the Defendants, in the James Monroe Elementary School attendance area, at 2808 N. W. 44th Street, Oklahoma City, Oklahoma. Raymond York finished the 6th grade at Monroe in the 1967-68 school year. Raymond York attended Taft Junior High School, as a 7th grade student, in the 1968-69 school year, the Monroe area being then a part of the Taft attendance area. Prior to the beginning of the 1969-70 school year, the Monroe area was transferred from the Taft attendance

area to the Harding Junior High School attendance area, as a part of the Plaintiff's Plan, approved by this Court on August 13, 1969, for the further desegregation and integration of the Oklahoma City Public Schools in the 1969-70 school year. However, Raymond York was enrolled by the Defendants at Taft, and not Harding, for the 1969-70 school year. The address of 2236 N. W. 27th Street, Oklahoma City, Oklahoma, which is in the Taft attendance area, was listed as the place of residence of Raymond York, which address was fraudulent upon the School Board. Upon discovery by school officials that Raymond York was still living with his parents at 2600 N. W. 44th Street and that the 27th Street address was not his actual residence for school purposes, the Defendants were notified by letter on November 10, 1969, that Raymond York could no longer attend Taft, his assigned school being Harding. Raymond York's enrollment at Taft was terminated, but the Defendants have continued to cause him to attend Taft, and have refused to permit him to enroll at Harding. That Defendants have continued to January 12, 1970, to require Raymond York to attend Taft Junior High School which action on the part of the Defendants the Plaintiff seeks to enjoin.

CONCLUSIONS OF LAW

The Court concludes from the foregoing findings of fact that the Defendants, Raymond P. York and Yvonne J. York, are violating the orders and judgments of this Court for the desegregation of the public school system operated by Plaintiff and if they are not further restrained and enjoined from sending their son, Raymond York, to Taft Junior High School that they will continue such acts, and the Court further concludes that if the Defendants are not restrained and a preliminary injunction issued that immediate and irreparable injury, loss and damage will result to the plaintiff and to the orders and judgments of this Court for the desegregation of the Public School System operated by Plaintiff.

(APPENDIX)

JUDGMENT OF PRELIMINARY INJUNCTION

Based upon the foregoing findings of fact and conclusions of law, the Plaintiff's Motion for Preliminary Injunction be, and the same is hereby sustained, and;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Defendants, Raymond P. York and Yvonne J. York, husband and wife, are jointly and severally restrained and enjoined from sending Raymond York to attend Taft Junior High School or attempting to have him attend Taft Junior High School and said Defendants, Raymond P. York and Yvonne J. York are ordered to forthwith remove their son, Raymond York, from the Taft Junior High School where he is presently attending without proper authority.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that commencing with the second semester of the school year 1969-70, and until further order of this Court or the modification of the attendance area in which the Defendants reside, that if Raymond York, the son of the Defendants, attends the Oklahoma City Public School System, he will attend the Harding Junior High School, the attendance area in which the residence of the defendants and Raymond York, the son, is presently located. That nothing herein shall restrain the Defendants from sending Raymond York to a school not a part of the Public School System.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Floyd E. Carrier, the United States Marshal for the Western District of Oklahoma or his designated Deputy or Deputies shall, commencing on the 19th day of January, 1970, make an investigation to determine if Raymond York, the son of the Defendants, attempts or does attend Taft Junior High School in violation of this Order. That the United States Marshal for the Western District of Oklahoma or designated Deputy or Deputies are to re-

strain Raymond York from entering Taft Junior High School or its surrounding school grounds and if said Raymond York enters the building or the grounds of Taft Junior High School then he shall be taken into custody and retained in the custody of the United States Marshal for the Western District of Oklahoma, during the school hours of Taft Junior High School. That at the close of any school day during which Raymond York has been in the custody of the United States Marshal, said Raymond York shall be delivered to the custody of the defendants, Raymond P. York and Yvonne J. York. A copy of this Preliminary Injunction shall be served on the Defendants, Raymond P. York and Yvonne J. York, by the United States Marshal or his Deputy or Deputies who shall make due and proper return of said service.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by this Court that this Order, Judgment and Preliminary Injunction are binding upon the parties to this action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this preliminary injunction become effective January 12, 1970, at 12:01 p.m. and shall remain in force until the further order of this Court.

Fail not under penalty of law.

IT IS FURTHER ORDERED that this matter is set for January 22, 1970, at 9:00 a.m. for further hearing on the permanent injunction.

Dated this 10th day of January, 1970.

Luther Bohanon
United States District Judge